

Appl. No. 10/687,845
Docket No. CM2526C
Amdt. dated April 8, 2008
Reply to Office Action mailed on January 9, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 10-17, 19, and 20 are pending in the present application.

Rejection Under 35 U.S.C. § 103(a) Over Williams (US 6,506,958) in View of Schneider and Sustmann (US 4,583,980) and Furman (US 5,451,404)

Claims 10-17, 19, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams (US 6,506,958) in view of view of Schneider and Sustmann (US 4,583,980) and Furman (US 5,451,404). The Applicants respectfully assert that the Office Action fails to establish a *prima facie* case of obviousness against Claim 10 because there is no motivation to combine Williams with Schneider and Sustmann and Furman. The Applicants respectfully further assert that even if a *prima facie* case of obviousness is properly established, the references, as cited, teach away from the claims of the present application.

The Applicants submit that there is no motivation to combine Williams with Schneider and Sustmann and Furman for three reasons. First, Williams is to a signal tampon (see e.g. Title). Williams states that the indicator is designed to provide a sensory signal to the user that the capacity of the tampon is exhausted. (see e.g. Col. 1, Lines 9-12 and Col. 2, Lines 60-62). Williams further states that the indicator alerts the user that by-pass leakage is about to commence. (see e.g. Col. 2, Lines 10-15, Col. 3, Lines 10-12). In essence, the signal tampon of Williams provides a burst of sensation, or signal, to the user that user should change her tampon. The signal would need to be intense enough such that signal alerts the wearer that she needs to immediately remove and replace the tampon. (see e.g. Col. 3, Lines 54-56).

Schneider and Sustmann, Col. 5, Lines 24-27 teaches employing triethyl citrate to provide for long lasting odor suppression. Schneider and Sustmann, Col. 4, Lines 35-36 and Col. 5, Lines 17-23 report odor suppression by way of suppressing alkalization of urine for durations of 14 hours. Thus, Schneider and Sustmann relates to sustained and long-term odor control.

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One skilled in the art seeking to provide for long lasting comfort for hygienic articles would not be motivated to combine Williams, which teaches how to achieve a burst of sensation, with Schneider and Sustmann, which teaches a chemical substance to provide for sustained odor suppression by way of suppressing alkalization of urine for extended durations, because the utility for the references are at opposite ends of the spectrum in terms of the length of time over which each invention performs. One skilled in the art would not be motivated to combine a reference related to a tampon designed to provide a burst of sensation over a short period of time with a reference teaching long-term odor suppression. Williams desires a rapid impulse release whereas Schneider and Sustmann desire a sustained odor suppression over a long period of time.

Second, modifying Williams, as taught by Schneider and Sustmann, would render Williams unsatisfactory for its intended purpose. Under *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984), if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. As discussed above, the tampon in Williams is to provide a signal that the capacity of the tampon is exhausted. If the teaching of Schneider and Sustmann is applied to the tampon of Williams, the signal from the tampon in Williams would be dampened. The lack of distinctness of a signal in the tampon might fail to provide to the wearer the immediate alert that by-pass leakage is about to occur which would make the tampon of Williams unsatisfactory for its intended purpose.

Third, the proposed modification or combination of Williams with Schneider and Sustmann would change the principle of operation of Williams. Under, *In re Ratti*, 270 F.2d 810 (CCPA 1959), if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. As discussed above, the principle of operation of Williams is to provide a distinct signal that the capacity of the tampon is exhausted. Applying the teaching of Schneider and Sustmann would dampen the signal provided by Williams. Thus, the principle of operation would change from providing a distinct alert, as in Williams, to providing for a weaker change in sensation to the user that the capacity of the tampon is exhausted if the teaching of Schneider and Sustmann is followed.

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Even if a *prima facie* case of obviousness is established, the Applicants submit that Williams teaches away from making the modification of Schneider and Sustmann. Williams teaches that the signal tampon should provide an alert that the capacity of the tampon is exhausted, that by-pass leakage is about to occur, or that the user needs to immediately remove or replace the tampon. One skilled in the art considering Williams would understand that distinctness and intensity of the signal provides the benefit sought in Williams and would not seek to reduce the sensational impact by following the teaching of Schneider and Sustmann, which would lower the intensity of the signal provided to the user. Thus, the Applicants submit that Williams teaches away from applying the odor suppression agent in Schneider and Sustmann to the tampon in Williams.

Based on the above, the Applicants submit that the Office Action fails to establish a *prima facie* case of obviousness against Claim 10 of the present application. Even if a *prima facie* case of obviousness is established, the Applicants submit that the *prima facie* case of obviousness is rebutted because Williams teaches away from making the combination suggested in the Office Action. The Applicants submit that Claim 10 is allowable and respectfully request that Claim 10 be allowed.

Claims 11-17, 19, and 20 depend upon Claim 10. As discussed above, the Applicants submit that Claim 10 is allowable. Thus, the Applicants submit that Claims 11-17, 19, and 20 are also allowable. The Applicants respectfully request that Claims 11-17, 19, and 20 be allowed.

Double Patenting Rejections

Applicants agree to submit all necessary terminal disclaimers related to US 6,972,010 and US Application No. 11/106,402, upon indication of allowable subject matter.

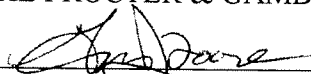
Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

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Respectfully submitted,

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